

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: Tmt. **V. Vannamalar**, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,
District Munsif, Ponneri.

Monday, the 04th day of March 2024

I.A.No.3/2021

in

O.S.No.49/2019

1. S.Ashok Kumar
2. A.Banu
3. Thangaraj
4. Jayaraman
5. N.V.Loganathan

.....Petitioners/Plaintiffs

-Vs -

1. A.Premalatha
2. Thombaralingam
3. The Commissioner, Ponneri Municipality, Ponneri
(Amended as per order in IA.No.5/2022 dated 13.12.2022.)
4. The District Collector, Thiruvallur District

.....Respondents/Defendants

This petition came up for hearing on 04.03.2024, in the presence of Mr.R.Manickavelu, learned counsels for the petitioners/plaintiffs and M/s.Golden Law Associates, learned counsels for the 1st respondent/ 1st defendant and the Learned Government Pleader Mr. Nithya Kumar for the 3rd and 4th Respondents. The 2nd Respondent has been set exparte in the suit and hence notice to him in this petition is dispensed with. Upon hearing the arguments of both sides and on perusal of the material case records and having stood over for consideration before this court till this day, this court delivers the following

ORDER

This petition has been filed by the petitioners under Order 26 Rule 9 of Civil Procedure Code seeking to appoint an advocate commissioner along with Taluk Surveyor of the Ponneri Taluk to measure the petition schedule mentioned property and to note down the physical features and to file a report and sketch.

2. Brief averments of the affidavit filed by the petitioners are as follows:

2.1 The 1st petitioner/ 1st plaintiff has filed his affidavit on his behalf and on behalf of other petitioners. The petitioners submit that Thiruvottiyur High Road Cross street is situated at Venbakkam Village under the limit of Ponneri Town Panchayat, Ponneri Taluk in Survey No.530/5 and 530/1A1A2. The breadth of the road is 13 feet which is under the control of the 3rd respondent/3rd defendant. The petitioners/plaintiffs and the 1st and 2nd respondents/1st and 2nd defendants are having property in the said street and they reside over there. The petitioners submit that the 1st and the 2nd respondents have encroached the street and had put up compound wall in the said street.

2.2. The petitioners submit that the entire street residents requested the 1st and 2nd respondents /1st and 2nd defendants to remove the encroachment but they did not consider. Finally the said street people and the petitioners have complained the matter to the 3rd respondent/3rd defendant. The 3rd respondent sent the complaint to the Tahsildar, Ponneri. The Tahsildar immediately took action to remove the encroachment in the street. But the 1st respondent/ 1st defendant filed a suit against the 3rd respondent/3rd defendant for a relief of permanent injunction before this court in OS.No.135/2016. Since the case was filed the 3rd respondent/ 3rd defendant did not take any steps. But the said case was dismissed on 08.06.2019. The petitioners submit that the said street people including the petitioners are suffering due to the said encroachment on the road and the vehicles also face difficulty in passing the said street. The petitioners submit that only when an Advocate Commissioner is appointed to measure the street along with the Taluk Surveyor, Ponneri the encroachment will come to light. Hence this petition.

3. Brief averments of the counter filed by the 1st respondent are as follows:

3.1. The 1st respondent submits that he is the 1st defendant in the above suit and submits that he has a valid title documents for his property and that he is the absolute owner of the property comprised in S.No.530/1A1A1 bearing Patta No.225

measuring to an extent of 3126 sq.ft. situated at No.59, Venbakkam village, Ponneri Taluk, Thiruvallur District and purchased by way of a registered sale deed in document No.2625 of 2000 dated 21.08.2000 at SRO, Ponneri.

3.2. The 1st respondent submits that on 04.08.2014 the petitioners have given a false complaint to the 3rd respondent. The 3rd respondent has issued a notice dated 03.03.2015. The 1st respondent has given a proper reply to the said notice. Again after receipt of the reply, the 3rd respondent herein has issued another notice dated 05.08.2015. The 1st respondent has approached the 3rd respondent with all relevant documents and submitted a written statement and clarified the entire issue. On 12.08.2015 she had given a representation to the Tahsildar, Ponneri and paid charges to survey the property with the help of the Taluk Surveyor. But after receipt of the survey charges, the 3rd respondent did not inspect the property with the Taluk Surveyor knowing that the 1st respondent has not encroached the 13 feet wide road as alleged by the petitioners. The petitioners are threatening the 1st respondent's old aged parents in the property using filthy language. Hence the 1st respondent had filed the suit in OS.No.135 of 2016 on the file of this court. In the year 2019, the petitioners have filed this suit setting out false and frivolous allegations.

3.3. The 1st respondent also submits that the 2nd respondent Mr.Thombaralingam is the encroacher of the said 13 feet wide road. The 2nd respondent is high handed and politically influential person. The 3rd respondent is acting in favour of the 2nd respondent herein for illegal gain and advantage. The petitioners are creating false and frivolous allegations against the 1st respondent.

3.4. The 1st Respondent further submits that she had properly obtained building approval plan for her property from the 3rd respondent and that she has not encroached the 13 feet road. The 1st respondent states that the petitioners have filed this suit only to harass him and to give him mental stress and agony. The 1st respondent also states that the street mentioned by the petitioners is not a street and

that it is a private land that has not been handed over to the Government till date. Hence prays to dismiss the petition with costs.

4. The 2nd Respondent has been set exparte in the suit and hence notice to him in this petition is dispensed with. The Counsel for respondents 3 and 4 have made an endorsement in the petition stating that he has no counter to this petition.

5. On the side of the petitioners and the respondents no oral or documentary evidence was placed before this court. Now, it is the paramount duty of this court to decide whether this petition is to be allowed or not?

6. Heard both sides arguments. Records Perused.

7. On careful analysis, it is noted that the petitioners are the plaintiffs in the suit and the suit has been filed against the respondents/defendants praying for a relief of mandatory injunction with respect to the suit property. When the suit was pending, this petition was filed. The petitioners submit that Thiruvottiyur High Road Cross street is situated at Venbakkam Village under the limit of Ponneri Town Panchayat, Ponneri Taluk in Survey No.530/5 and 530/1A1A2. The breadth of the road is 13 feet which is under the control of the 3rd respondent/3rd defendant. The petitioners/plaintiffs and the 1st and 2nd respondents/1st and 2nd defendants are having property in the said street and they reside over there. The petitioners submit that the 1st and the 2nd respondents have encroached the street and had put up compound wall in the said street. The petitioners submit that the said street people including the petitioners are suffering due to the said encroachment on the road and the vehicles also face difficulty in passing the said street. The petitioners submit that only when an Advocate Commissioner is appointed to measure the street along with the Taluk Surveyor, Ponneri the encroachment will come to light.

8. On the other hand, the 1st respondent submits that he is the 1st defendant in the above suit that he has a valid title documents for his property and that he is the

absolute owner of the property comprised in S.No.530/1A1A1 bearing Patta No.225 measuring to an extent of 3126 sq.ft. situated at No.59, Venbakkam village, Ponneri Taluk, Thiruvallur District and purchased by way of a registered sale deed in document No.2625 of 2000 dated 21.08.2000 at SRO, Ponneri. The 1st respondent submits that she had properly obtained building plan approval for her property from the 3rd respondent and had constructed the building in her land as per the approved plan and that she has not encroached the 13 feet road as stated by the petitioners. The 1st respondent also submits that the 2nd respondent Mr.Thombaralingam is the encroacher of the said 13 feet wide road.

9. The 2nd Respondent has been set exparte in the suit and hence notice to him in this petition is dispensed with. The Counsel for respondents 3 and 4 have made an endorsement in the petition stating that he has no counter to this petition.

10. On consideration of the rival submissions, this court is of the considered view that there is a dispute between the parties in the suit with respect to encroachment made on the road. Though the 1st respondent states that she has not made any encroachment on the road, she states that the 2nd respondent had made the alleged encroachment. Since the encroachment of the road is under dispute, this court views that the appointment of an Advocate Commissioner is necessary to find out whether there is any encroachment as disputed between the parties. The report of the Advocate Commissioner will elicit clarity on in-situ condition to this court as to decide on the matter in dispute and may minimize the efforts to gather up evidence to adjudicate in this case. Hence this court is inclined to allow this petition.

11. In the result, this petition is allowed. Advocate Mr. V. Sathish Kumar is appointed as an Advocate Commissioner and he is directed to inspect the suit A and B schedule properties and the Thiruvottiyur High Road cross street situated in between both the properties as per rough sketch enclosed with plaint and to measure the same with concerned VAO and Firka surveyor after giving due notice to both the parties

and to fix the boundaries and find out the encroachment, if any, on the road and to note down its physical features and file a detailed report with plan on or before 08.04.24. His remuneration is fixed at Rs.10,000/- and the petitioners are directed to pay the same to the commissioner directly within 10 days from today. Commissioner report and plan by 08.04.24.

Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 04th day of March 2024.

**Sd/-V. VANNAMALAR,
DISTRICT MUNSIF
PONNERI**

Both side witnesses and documents:- NIL

**Sd/-V. VANNAMALAR,
DISTRICT MUNSIF
PONNERI**

Fair/ Draft Order
I.A.No.3/2021
O.S.No.49/2019
Date:04.03.2024
DMC,PNI.